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In this chapter. . .

If a child remains in placement following termination of parental rights, a court must conduct review hearings to determine the appropriateness of the child’s placement and permanency plan, and whether reasonable efforts are being made to finalize that permanency plan. This chapter describes the procedures for those review hearings. It also discusses placement of a child for adoption during the time allowed for rehearing and appeal of an order terminating parental rights, and termination of a court’s jurisdiction of a child protective proceeding.

19.1 Purpose of and Time Requirements for Post-Termination Review Hearings

Statutory requirements. MCL 712A.19c(1)–(2) state as follows:

“(1) Except as provided in section 19(4)* and subject to subsection (2), if a child remains in placement following the termination of parental rights to the child, the court shall conduct a review hearing not more than 91 days after the termination of parental rights and no later than every 91 days after that hearing for the first year following termination of parental rights to the child. If a child remains in a placement for more than 1 year following termination of parental rights to the child, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of the first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. A review hearing under this subsection shall not be canceled or delayed beyond the number of days required in this subsection, regardless of whether any other matters are pending. Upon motion by any party or in the court’s discretion, a review hearing may be accelerated to review any element of the case. The court shall conduct the first permanency planning hearing within 12 months from the date that the child was

*§19(4) contains time requirements for review hearings when a child is subject to a “permanent foster family agreement” or is placed with a relative in a placement intended to be permanent. See Section 16.1.

originally removed from the home. Subsequent permanency planning hearings shall be held within 12 months of the preceding permanency planning hearing. If proper notice for a permanency planning hearing is provided, a permanency planning hearing may be combined with a review hearing held under section 19(2) to (4) of this chapter. A permanency planning hearing under this section shall not be canceled or delayed beyond the number of months required in this subsection, regardless of whether any other matters are pending. At a hearing under this section, the court shall review all of the following:

- (a) The appropriateness of the permanency planning goal for the child.
- (b) The appropriateness of the child's placement.
- (c) The reasonable efforts being made to place the child for adoption or in other permanent placement in a timely manner.

*As amended by 2004 PA 476, effective December 28, 2004.

“(2) This section applies only to a child's case in which parental rights to the child were either terminated as the result of a proceeding under section 2(b) of this chapter or a similar law of another state or terminated voluntarily following the initiation of a proceeding under section 2(b) of this chapter or a similar law of another state. This section applies as long as the child is subject to the jurisdiction, control, or supervision of the court or of the Michigan children's institute or other agency.”*

Court rule requirements. The court rule governing post-termination review hearings, MCR 3.978, states in relevant part:

“(A) *Review Hearing Requirement.* Unless the child has been placed in a permanent foster family agreement or is placed with a relative and the placement is intended to be permanent, if a child remains in foster care following the termination of parental rights to the child, the court must conduct a hearing not more than 91 days after the termination of parental rights and at least every 91 days after that hearing to review the child's placement in foster care and the progress toward the child's adoption or other permanent placement, as long as the child is subject to the jurisdiction, control, or supervision of the court, or of the Michigan Children's Institute or other agency.”

19.2 Required Findings and Conclusions Following Review Hearings

MCR 3.978(C) states as follows:

“(C) *Findings.* The court must make findings on whether reasonable efforts have been made to establish permanent placement for the child, and may enter such orders as it considers necessary in the best interests of the child.”

Requirements to maintain eligibility for federal Title IV-E funding.

Federal law and regulations require a court to make and document its findings regarding reasonable efforts to finalize a permanency plan for a child in foster care. These findings must be made to maintain a child’s eligibility for federal Title IV-E foster care funding. See Section 17.2 for a more detailed discussion.

Placing child on adoption registry. If an adoptive family has not been identified within 90 days of the entry of the order terminating parental rights, the child must be included in the registry of children available for adoption. MCL 722.954b(2) and MCL 722.958.

19.3 “Legal Risk Placement”

Once an order of termination has been entered by a court, a child may be placed for adoption even though the time for a rehearing or appeal of the termination order has not expired. The placement is a “legal risk” placement, more commonly referred to as a “legal risk adoption.” MCL 710.41(2) states:

“If an order terminating parental rights is entered pursuant to [the Adoption Code] or [the Juvenile Code], the child may be placed in a home for the purpose of adoption during the period specified for a rehearing or an appeal as of right and the period during which a rehearing or appeal as of right is pending. When a child placing agency, the court, or [the DHS] formally places a child or the court approves placement of a child pursuant to this subsection, the child placing agency, court, or the [DHS] shall inform the person or persons in whose home the child is placed that an adoption will not be ordered until 1 of the following occurs:

- (a) The petition for rehearing is granted, at the rehearing the order terminating parental rights is not modified or set aside, and subsequently the

period for appeal as of right to the court of appeals has expired without an appeal being filed.

(b) The petition for rehearing is denied and the period for appeal as of right to the court of appeals has expired without an appeal being filed.

(c) There is a decision of the court of appeals affirming the order terminating parental rights.”

A “legal risk placement” or a “legal risk adoption,” as referred to in this section, does *not* refer to an “at risk” adoption. In *In re JK*, 468 Mich 202, 209 (2003), the trial court granted an adoption while a timely application for leave to appeal was filed in the Supreme Court. The Supreme Court noted that the county designated the adoption, which occurred prior to the expiration of the appeals, as an “at risk” adoption. *Id.* at 217 n 25. The term “at risk” denoted the risk that the Supreme Court might vacate the order terminating parental rights. The Supreme Court reversed the order terminating parental rights and determined that the adoption was therefore invalid. *Id.* at 219. The Supreme Court explicitly disapproved of “at risk” adoptions. *Id.* at 217 n 25.

However, as referred to in this section, a “legal risk placement” or “legal risk adoption” denotes the *placement* of a child prior to the expiration of the appeals period; *no* adoption order is entered prior to the expiration of the appeals period.

MCL 710.41 does not prevent a child residing in a licensed foster home from being adopted by the foster parent or parents. MCL 710.41(3).

19.4 Termination of Jurisdiction

“[I]f the court has exercised jurisdiction over a juvenile under [MCL 712A.2(b)], jurisdiction shall continue for a period of 2 years beyond the maximum age of jurisdiction conferred under [MCL 712A.2], unless the juvenile is released sooner by court order.” MCL 712A.2a(1). The maximum age of jurisdiction conferred under MCL 712A.2(b) is 18 years. Thus, a court may retain jurisdiction over a child until that child’s 20th birthday, unless the child is released from the court’s jurisdiction sooner.

MCR 3.978(D) states:

“(D) *Termination of Jurisdiction.* The jurisdiction of the court in the child protective proceeding may terminate when a court of competent jurisdiction enters an order terminating the rights of the entity with legal custody and enters an order placing the child for adoption.”

Under the Adoption Code, a court may enter an order terminating the rights of the person or entity consenting to a child's adoption and formally placing a child for adoption. MCL 710.51. For a complete discussion of formal placement, see Warner, *Adoption Proceedings Benchbook* (MJI, 2003), Chapter 6.

Continuation of a child's placement. If a child is placed in a foster home or foster care facility prior to his or her 18th birthday, that placement may continue after the child's 18th birthday. MCL 722.111(1)(k)(ii). If a child has been committed to the Michigan Children's Institute (MCI), the child may remain a state ward until his or her 19th birthday. MCL 400.203(a). If parental rights have been terminated, the court must continue to review the case while a child is in placement or under the jurisdiction, supervision, or control of the Michigan Children's Institute. MCL 712A.19c(1)–(2) and MCR 3.978(C).

MCL 400.204(2) requires a child's lawyer-guardian ad litem and the MCI Superintendent to communicate regarding a child. That provision states:

“During the time a child is committed to the superintendent of the Michigan children's institute, the superintendent and the child's attorney may communicate with each other regarding issues of commitment, placement, and permanency planning; and if the child's attorney has an objection or concern regarding such an issue, the superintendent and the child's attorney shall consult with each other regarding that issue.”

